

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEFFREY R. MODICA,)	
KATARZYNA A. MODICA a.k.a.)	
KATIE MODICA,)	Case No. 1:14-cv-03308
)	
Plaintiffs,)	Honorable Judge James B. Zagel
)	
v.)	
)	
)	
GREEN TREE SERVICING, LLC)	
)	
Defendant.)	

**LOCAL RULE 56.1 STATEMENT OF UNCONTESTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES, Plaintiff, KATIE MODICA (“Mrs. Modica”), by and through her attorneys, Sulaiman Law Group, Ltd, submitting this statement of material facts to which there is no genuine issue and which entitles Plaintiff to summary judgment in her favor as to Count I as follows:

The Parties

1. Mrs. Modica and her husband, Jeffrey R. Modica (“Mr. Modica,” collectively “Plaintiffs”) are natural persons residing at 240 South Villa Avenue, Addison, Illinois. *Pl. Compl.* ¶4.

2. Defendant Green Tree Servicing, LLC (“Green Tree”) is a limited liability company with its principal office located at 345 St. Peter Street, Suite 300, St. Paul, Minnesota. *Pl. Compl.* ¶5.

Jurisdiction and Venue

3. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C. § 227 and 28 U.S.C. §§ 1331, 1337, as the action arises under the laws of the United States. This Court has supplemental jurisdiction over state law claims pursuant to 28 U.S.C. § 1367. *Pl. Compl.* ¶2.

The Subject Debt and Subsequent Bankruptcy

4. In May 2008, Mr. Modica obtained a loan from Countrywide Home Loans (“Countrywide”) in the approximate amount of \$51,000.00 (“subject debt”) secured by a second mortgage on Plaintiffs’ home located at 240 South Villa Avenue, Addison, Illinois. *See* attached Exhibit A, 9:17-11:3, is a true and accurate copy of the transcript of Mr. Modica’s deposition.

5. Mrs. Modica was not an obligor on the subject debt. *See* attached Exhibit B, 8:21-9:5, is a true and accurate copy of the transcript of Mrs. Modica’s deposition.

6. On June 6, 2008, the Plaintiffs filed a Chapter 7 bankruptcy petition in the Northern District of Illinois, case number 08-14633. *Pl. Compl.* ¶6.

7. The Plaintiffs listed Countrywide as a secured creditor in their bankruptcy schedules. *Pl. Compl.* ¶7.

8. Mr. Modica did not reaffirm the subject debt. *See* Exhibit A, 13:11-14:9.

9. On September 9, 2008, Plaintiffs were granted a discharge of their dischargeable debts, including the subject debt. *Pl. Compl.* ¶11.

10. At some point after Plaintiffs’ bankruptcy discharge, the servicing and/or ownership of the subject debt was transferred from Countrywide to Green Tree. *Pl. Compl.* ¶13.

11. Plaintiffs continued to make timely payments to Green Tree for approximately 3 years after their discharge. *See* Exhibit A, 18:19-22.

12. Around October 2011, Plaintiffs stopped making payments to Green Tree because of a reduction of income due to Mrs. Modica ceasing employment to stay home with their young children. *See* Exhibit A, 18:14-20:9; Exhibit B 12:23-13:5.

Informational Background

13. Mr. Modica's cellular phone number is (630) 625-2000. *See* Exhibit A, 30:23-31:6.
14. Mr. Modica provided Countrywide with the following numbers in his application for the subject loan: (a) (630) 359-3507 as his "Home Phone" and (b) (630) 393-1701 as his "Business Phone." *See* attached Exhibit C, Responses 7-8, is a true and accurate copy of Plaintiffs' Responses to Green Tree's Requests for Admissions.
15. Neither of the numbers listed on the application were Mr. Modica's cellular phone number. *See* Exhibit A, 30:23-31:6; Exhibit C, Responses 7-8.
16. Mrs. Modica's cellular phone number is (630) 625-2342. *See* Exhibit B, 17:5-7.
17. Mrs. Modica was not a signatory to the subject debt and thus her number was never provided to Countrywide during the application process for the subject loan. *See* attached Exhibit D is a true and accurate copy of Mr. Modica's application for the subject debt.
18. Mrs. Modica never provided Green Tree with her cellular phone number. *See* Exhibit B, 44:20-22.
19. Green Tree obtained Mrs. Modica's cellular phone number as a result of Mrs. Modica calling Green Tree to complain about Green Tree calling her neighbors. *See* Exhibit B, 44:20-21; also *see* attached Exhibit E, pgs. 15-16, entry dated November 12, 2011, is a true and accurate copy of Green Tree's Collection Comment List produced by Green Tree in discovery.

Green Tree's Phone Systems

20. Green Tree employed two methods to place outgoing calls to Mr. Modica and Mrs. Modica from November 12, 2011 to April 24, 2012. *See* attached Exhibit F, 60:16-66:4, 187:22-200:2, is a true and accurate copy of the deposition transcript of Green Tree's systems manager,

Roger Sparks; Exhibit E, pgs. 1-20; *see* also attached Exhibit G, Responses 1-7, a true and accurate copy of Green Tree's responses to Plaintiffs' Second Set of Interrogatories.

21. The first method is through a predictive dialing system. A predictive dialing system is a combination of software and hardware which generates outbound dials in an effort to create contacts. Predictive dialing systems are employed by the debt collection industry for efficiency purposes and are capable of placing more than 100 calls per minute. Green Tree's predictive dialing system model is an Aspect Unified IP Version 6.6 Service Pack 2. *See* Exhibit F, 22:14-27:12; 47:9-11; Exhibit G, Response 3.

22. The second method employed by Green Tree to place calls to Plaintiffs was through a UCSE custom-built user interface software on Microsoft.NET Framework 4.0 ("UCSE"). The UCSE is a software used to access a customer's phone number and other information. This calling method requires a human to click a "dial" option ("click method") on a computer screen and is effectuated through the interplay of multiple systems. Specifically, the numbers to be called are stored on an IBM 9117, Model MMD server ("server") with an IBM System I platform and GTA and GTFC4 systems. The UCSE and server work together to enable the Green Tree agent to make a call. The number to be dialed is pulled from the server to the UCSE which then makes the call using a phone that is connected to it. *See* Exhibit F, 61:3-66:4, 198:3-199:12; Exhibit G, Responses 2-5.

23. The UCSE and the Aspect Unified IP Version 6.6 Service Pack 2 are capable of working together to achieve a contact. Specifically, a Green Tree agent can sign in to the predictive dialing system through UCSE and "exchange an account number, a phone number so that the UCSE know who it is that the dialer is trying to call. So you can have an agent sitting at a desk logged into UCSE, logged into their extension. They log into the [predictive dialing

system] to take part in a predictive dialer campaign. The dialer cues off automated dials until they achieve a contact. They pass that to the available agent who is sitting at their desk logged into these applications. When it sends that audio to the agent's extension it also sends an account number via API to UCSE so it knows. UCSE pings the [server] so it can pass a screen pop" to that agent that displays the borrower's account details. *See* Exhibit F, 63:12-66:4.

The Phone Calls

24. From November 12, 2011 to April 24, 2012, Green Tree placed 54 phone calls to Mrs. Modica's cellular phone using the click method. *See* Exhibit E, pgs. 1-16; Exhibit F, 198:3-199:12; Exhibit G, Response 3.

Respectfully submitted,

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